

REMARKS

Claims 11-16 and 23-28 are pending. Claim 28 is withdrawn from consideration. Claims 11-16 and 23-27 are rejected.

Applicants thank the Examiner for the personal and telephonic interviews with the undersigned on October 17 and October 30, 2002, respectively.

Applicants acknowledge the Examiner's withdrawing of the rejection of claim 27 under 35 U.S.C. §112, paragraph 2. Applicants have further amended claim 27, as subsequently discussed, and have also amended the specification to correct a typographical error.

Applicants are unclear whether the rejection of claims 23-26 under 35 U.S.C. 103(a) over Tseung in view of Kalra are also in further view of Copeland, but have nevertheless addressed Copeland in this Amendment to provide a complete response and put the Application in complete condition for allowance.

Applicants respectfully request reconsideration of claims 11-16 and 23-27 for the following reasons.

CLAIM REJECTION UNDER 35 U.S.C. § 102

Claim 27 is rejected under 35 U.S.C. § 102(b) as anticipated by Tseung and Copeland.

The Examiner maintains the rejection in the September 13, 2001 Office Action that both Tseung and Copeland disclose reagent delivery from a reagent container to a slide on a slide support for staining. The Examiner states "that in the

apparatus of each Tseung and Copeland the reagents MUST necessarily be specific for the slides for which they are intended.”

Applicants respectfully disagree. Tseung discloses a slide tray that holds only slides. The slide tray is in a fixed location in the staining apparatus. A separate holder that holds only reagent containers is at a different fixed location. Tseung’s specimen slide does not have an associated accompanying specific reagent pack with the reagent specified in the staining protocol for that particular slide. Rather, the apparatus is programmed as appropriate for the slides and reagent containers at their own predetermined locations in their respective holders in order to stain the slides (column 5, lines 14-26 and Fig. 1). Thus, there is no associated accompanying reagent pack.

Copeland discloses a separate rotating slide support carousel (column 6, lines 61-63) and a separate rotating reagent bottle carousel to place a predetermined reagent bottle in the reagent delivery zone (column 11, lines 49-52). Copeland, thus, does not have a slide with an associated accompanying reagent pack.

Applicants have amended claim 27 to further clarify that the associated reagent pack is specific for and accompanies each particular slide. This is supported in the specification at least on page 11, lines 19-22 and page 13, lines 14-17.

“Associated” is defined as brought into company with another, joined in a relationship, combined, or linked. “Accompanying” is defined as going along with. The American Heritage Dictionary of the English Language, William Morris, Editor, Published by Houghton Mifflin Company, pages 80 and 8, respectively.

Neither Tseung nor Copeland have reagents that are associated accompanying a slide. Thus, applicants respectfully assert that claim 27, as amended, is not anticipated by Tseung or Copeland.

CLAIM REJECTIONS UNDER 35 U.S.C. § 103

Claims 11-16 and 23-26 are rejected under 35 U.S.C. § 103(a) as obvious over Tseung in view of Kalra. Applicants respectfully disagree.

Regarding claims 11-16, the Examiner states that “both Tseung and Kalra teach the automatic control means permit user input;” “a pause and restart function would be likely user input,” and “that modern dishwashers have such a function while a signal light is on that new dishes may be added and the cycle is restarted”. Applicants respectively assert that this rejection is improper because it does not consider the claimed invention as a whole in determining the differences between prior art and the claims, as required by MPEP 2141.02. Dishwashers are not an apparatus for staining slides. Further, applicants are unaware that they have a scheduling step to process the newly added “dishes” before, during, or after the new dishes are added. Applicants respectfully assert that the pause and restart function on a dishwasher is nonanalogous art. According to MPEP 2141.01(a) the examiner must determine what is “analogous prior art” for the purpose of analyzing the obviousness of the subject matter at issue.

As analyzed in applicants’ previous Amendment dated December 13, 2001, neither Tseung nor Kalra teach, motivate, or suggest a staining device with input features to allow new slides to be added to an existing staining run.

For at least these reasons, applicants submit that independent claims 11-16 are not obvious over Tseung in view of Kalra.

Regarding claims 23-26, the Examiner states that both Tseung and Kalra "cite drain bins with exit conduits to waste reservoirs" and "more than one solution to be drained is standard and to drain desired solutions into desired drains is old." Furthermore, the Examiner states that Copeland shows "a tipper to drain rinse liquid into a drain."

Applicants respectfully disagree that Tseung and Kalra's disclosure of drain bins with exit conduits to waste reservoirs and the disclosure by Copeland for a tipper to drain rinse liquid into a drain meet the standards for obviousness in relation to applicants' assembly.

As noted by the Examiner in the September 13, 2001 Office Action, neither Tseung nor Kalra teach, suggest, or motivate the incorporation of a tiltable sink assembly with first and second drain holes on different sides. Furthermore, Copeland discloses a tipper to tip a slide support surface to drain rinse liquid from the surface of a slide. Thus, there is no teaching, suggestion, or motivation in Tseung nor Kalra and further in view of Copeland to incorporate a tiltable sink.

Applicants' assembly is configured differently. This permits user control over reagent removal with a tiltable sink. For at least these reasons, applicants respectfully submit that claims 23 and 26 are not obvious over Tseung in view of Kalra.

Attached hereto is a marked-up version of the changes made to the claim by the current amendment. The attached page is captioned "Version With Markings To Show Changes Made".

CONCLUSION

For the foregoing reasons, applicants' invention is believed to be patentable and an early Notice of Allowance is respectfully requested. Attached is a check for a one month extension of time. Should any additional fees or surcharges be deemed necessary, the Examiner has authorization to charge fees or credit any overpayment to Deposit Account No. 23-3000.

The Examiner is invited to telephone the undersigned attorney if there are any questions or issues.

Respectfully submitted,

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VERSION WITH MARKINGS TO SHOW CHANGES MADE

IN THE SPECIFICATION

Once a user has loaded the autostaining apparatus, the user may start staining run. Figure 8A illustrates the general procedure of operating the autostaining device. Referring to Figure 8A, the user loads a slide/stain tray at step 801. The user then starts the apparatus by pressing the restart or stat button at step 802. The autostaining apparatus then examines all the slides to determine the slide protocols that must be performed at step 803. The system may compare a barcode sticker [402] 420 on a slide with a barcode 411 on the cover 410 of an adjacent reagent pack to ensure that the proper reagent pack has been placed next to each slide. After examining all the slides and reagent packs, the system creates a staining schedule. Details on how the staining apparatus creates the staining schedule will be presented in the following section.

IN THE CLAIMS:

Claim 27 has been amended as follows:

27. (TWICE AMENDED) An apparatus for staining specimen slides, said apparatus comprising:

at least one slide tray, said slide tray for holding at least one specimen slide and [also for holding] an associated accompanying specific reagent pack[, said associated reagent pack] having reagents needed for processing and specimen slide and identifiers for a processing protocol, and

an automatic staining head assembly, said automatic staining head assembly for obtaining said reagents from said associated accompanying reagent pack and depositing reagents on said specimen slide.